

MEMORANDUM

SEPTEMBER 1, 1994

To: Boston Redevelopment Authority and
Marisa Lago, Director

From: Brian DeLorey, Assistant Director
John O'Brien, Project Manager

Subject: Charlestown Navy Yard, Building 33

Executive

Summary: Memorandum requests that the Boston Redevelopment Authority ("BRA"), consent to and approve the sale, assignment, or transfer of Tenants leasehold estate under the Building 33 Ground Lease. Building 33 Realty Trust, a real estate trust formed for the benefit of South Boston Savings Bank, acquired the leasehold estate through foreclosure proceedings and now seeks to acquit responsibly its obligations under Article 23.2 of the Lease by assignment, sale or transfer of said leasehold estate to Kilkee Limited Partnership ("Kilkee LP"), the general partner of which is Roundstone Development Company, Inc., a development entity of Conroy/Heafitz Joint Venture.

A Ground Lease for Building 33 was executed by and between the BRA, as "Landlord", and Navy Yard Plaza Development Associates - 33 Limited Partnership, as "Tenant" on July 31, 1986 (the "Building 33 Lease"). Through foreclosure proceedings on April 14, 1994, Building 33 Realty Trust, a real estate trust formed for the benefit of South Boston Savings Bank ("SBSB"), a "Qualifying Leasehold Mortgagee", under the Building 33 Lease, acquired the leasehold estate. SBSB has the option under Section 23.2 (a) (ii) of the Building 33 Lease to sell, assign or transfer, with the prior written consent of the BRA, its entire interest thereunder to a purchaser, assignee or transferee acceptable to the BRA who shall expressly assume all of the covenants, agreements and obligations of the Tenant under the lease.

To that end, SBSB has secured a new development interest for the continued commercial development of Building 33. Kilkee Limited Partnership ("Kilkee LP"), the general partner of which is Roundstone Development Company, Inc, a development entity of Conroy/Heafitz Joint Venture ("Conroy/Heafitz") whose president is Mr. Terrence Conroy, has entered into an Agreement to acquire the property. Conroy/Heafitz has successfully rehabilitated four (4) structures including, buildings 79, 96, 266 and "P", yielding over 53,000 square feet of fully tenanted commercial office space within the Historic Monument Area. To date, Conroy/Heafitz has secured over \$7 million dollars from local banks to finance both initial rehabilitation costs and tenant improvements creating over 150 permanent jobs and 65 full time equivalent construction related jobs.

SBSB has agreed to provide acquisition financing as provided in the attached Purchase and Sale Agreement. As evidenced by this firm financing commitment and the developer's previous successes, the reputation, experience and financial capacity of the proposed Assignee and its principals are clearly adequate to responsibly assume the obligations of Tenant under the Ground Lease.

Despite the assignment of the leasehold estate outlined above, the terms of the Building 33 Lease will remain in full force and effect; ie., Kilkee LP, as the new Tenant will continue to pay "Base Rent" charges in the amount of \$35,624.40 annually and an additional annual payment of \$5,090 for maintenance and security. The annual linkage exaction payment of \$10,095.31 will be maintained by the new Tenant and the property will be fully taxable under standard City of Boston tax assessment procedures.

Since the proposed transfer will ensure both the continued success of Building 33 and the Navy Yard as a whole and will also ensure continued annual income to the Authority; and as Kilkee Limited Partnership has the requisite ability to assume the obligations under the Ground Lease, it is recommended that the Boston Redevelopment Authority approve the sale, assignment, or transfer of the leasehold estate to Kilkee Limited Partnership.

Appropriate Votes Follow:

PAUSED 5-2

VOTED: That the Boston Redevelopment Authority ("BRA"), as "Landlord", under a certain "Building - 33 Lease", dated as of July 31, 1986, (the "Building 33 Lease") hereby approves, in accordance with article 23.2 (a) and all other applicable provisions of the Building 33 Lease, the assignment by Building 33 Realty Trust, a real estate trust formed for the benefit of South Boston Savings Bank ("SBSB") of the "Tenant's" interest in and the assumption of all covenants, agreements and obligations of the "Tenant" under said Building 33 Lease by Kilkee Limited Partnership ("Kilkee LP"), the general partner of which is Roundstone Development Company, Inc. Said Assignment and Assumption shall ensure the continued use of the property for commercial uses consistent with the Navy Yard Masterplan, with such modifications and/or amendments that are acceptable to the Director as she may deem to be in the BRA's best interest (the "Assignment and Assumption of Building 33 Lease").

FURTHER

VOTED: That the Director of the Boston Redevelopment Authority ("BRA"), in connection with the Assignment and Assumption of Building 33 Lease approved on this date, is hereby authorized on behalf of the BRA to execute and deliver such documents, agreements and instruments as she may deem necessary to effectuate and evidence the consent under section 23.2 (a) and all other applicable provisions of the Building 33 Lease. Said documents shall be delivered upon satisfactory calculation of Landlord's participation in net transfer/refinancing proceeds. All related documents shall be provided to the Authority for its review and concurrence.

AGREEMENT TO ASSIGN LEASE

1. James A. McGowan, Trustee of Building 33 Realty Trust, UDT dated April 14, 1994 recorded Suffolk Registry of Deeds Book 19050, Page 287 ("Seller") agrees to transfer and assign and Kilkee Limited Partnership, a Massachusetts limited partnership, the general partner of which is Roundstone Development Company, Inc., a Massachusetts corporation, of One 13th Street, Charlestown, MA 02129 ("Buyer") agrees to buy and assume upon the terms hereinafter set forth the Seller's interest in and to a lease dated July 31, 1986 by and between The Boston Redevelopment Authority ("BRA"), Lessor, and Navy Yard Plaza Development Associates - 33 Partnership, Lessee, attached hereto as Exhibit A (the "Lease") of land and improvements known as Building 33, Charlestown Navy Yard, Charlestown, (City of Boston) Massachusetts, more particularly described therein (the "Premises"). For Seller's title see foreclosure deed recorded with said Deeds Book 19050, Page 296.

2. The Lease is to be assigned by an instrument in the form attached hereto as Exhibit B (the "Assignment") running to Buyer or to such nominee as Buyer may designate by written notice to Seller at least seven days before the Time of Closing (as hereinafter defined), which shall convey good and clear record and marketable title to the leasehold interest with no encumbrances thereon, except

(a) Applicable laws and regulations of any governmental authority in effect on the Time of Closing;

(b) Such taxes for the then current year as are not due and payable on the date of the delivery of such Assignment;

(c) Any liens for municipal betterments assessed after the date hereof;

(d) Conditions and covenants set forth in deed of the United States of America to the Boston Redevelopment Authority dated July 7, 1978 recorded Suffolk Registry of Deeds Book 9182 Page 149 as affected by a Non-disturbance and Attornment Agreement dated February 7, 1991 recorded at said Deeds Book 16711 Page 195.

(e) Easements and restrictions of record, if any, which do not materially interfere with the use of the Premises for office purposes.

(f) Such leases as are attached hereto as Exhibits C1-C3 (the "Subleases"); and

(g) Such linkage payments in connection with the Lease which are not yet due and payable.

In the event that Buyer designates a nominee, all Exhibits shall be changed accordingly, but Buyer shall personally guaranty all of said nominee's obligations and undertakings in connection with Paragraph 11 hereunder and Exhibits B and E hereto.

3. The agreed price (the "Purchase Price") for the Assignment is Two Million Seven Hundred Thousand (\$2,700,000.00) Dollars. The Purchase Price is to be paid as follows: Thirty Thousand (\$30,000.00) Dollars has been paid as a deposit herewith and the balance as adjusted by §9 herein will be paid in cash or by certified or bank check at the time of closing.

4. Such Assignment is to be delivered at 10:00 A.M. on the 30th day of August, 1994, at the offices of Peabody & Arnold, 50 Rowes Wharf, Boston, Massachusetts, 02110 unless otherwise agreed upon in writing together with the following additional documents which will be executed, acknowledged and delivered as set forth therein:

(a) an estoppel certificate duly executed and acknowledged on behalf of the BRA in the form attached hereto as Exhibit D;

(b) an estoppel certificate duly executed and acknowledged by each subtenant and Tenant at Will referred to in Exhibit E, such estoppel certificate to be in the form attached hereto as Exhibit F;

(c) an assignment duly executed and acknowledged by Seller of all agreements, if any, with third parties relating to the operation, management, maintenance, repair or security of the Premises (the "Service Contracts") in the form attached hereto as Exhibit G;

(d) the original Subleases, the original Service Contracts and a copy of the Lease;

(e) a Notice of Assignment in the form attached hereto as Exhibit H; and

(f) such other documents as the lender and the title company may reasonably request.

5. Full possession of the Premises free of all tenants and occupants except as set forth herein is to be delivered at the Time of Closing, the Premises to be then in the same condition as they now are reasonable use and wear thereof excepted. Seller covenants and agrees that it will not for so long as this Agreement is operable, without the prior written

consent of Buyer, (a) amend or modify the Lease, (b) amend, modify or terminate the Subleases, or any of them, (c) enter into any leases relating to the Premises in addition to the Subleases, (d) amend or modify the Service Contracts, (e) enter into any other agreements, encumbrances or arrangements, written or oral, relating to the Premises, other than in the ordinary course of business.

6. Buyer will have the right from time to time to inspect the Premises together with Buyer's agents and/or employees at all reasonable time prior to the Time of Closing, including the right to make such surveys, engineering and architectural studies, soil test and borings, and any other tests or studies which Buyer may reasonably deem necessary or desirable, provided that the Premises shall promptly be restored by Buyer to their condition prior to such tests, borings and/or studies. Seller has not made and does not make any representations, warranties or statements as to the physical condition, expenses, operation or any other matter or thing affecting or related to the Property, except as herein specifically set forth. In the event that any of such tests or borings reveals concentrations of hazardous wastes or hazardous materials as defined in Mass. G.L. c. 21E that are deemed reportable to Mass. DEQE, then Buyer, at Buyer's option, may elect to have all deposits hereunder refunded and thereupon this agreement shall be null and void without further force or effect.

7. If the Seller shall be unable to make the Assignment, or to deliver possession of the Premises, or to deliver the documents required by Paragraph 4 hereof, (the "Additional Documents"), or if at the Time of Closing the Premises do not conform with the provisions hereof, then any payments made under this Agreement shall be refunded and all other obligations of the parties hereto shall cease and this Agreement shall be void and without

recourse to the parties hereto, unless Seller elects to use reasonable efforts to cure any such deficiencies, in which event this Agreement shall be extended for a further period of thirty (30) days.

If at the expiration of the extended time Seller shall have failed so to cure any such deficiencies, then any payments made under this Agreement shall be forthwith refunded and all other obligations of all parties hereto shall cease, and this Agreement shall be void and without recourse to the parties hereto, provided that Buyer shall have the election to accept the Premises in their then condition and to pay therefor the Purchase Price without deduction, in which case Seller shall execute the Assignment and other additional documents as applicable under the then circumstances. If any portion of the Premises shall have been taken by exercise of the power of eminent domain or if any portion of the Premises is damaged by fire or other casualty, Seller shall pay over or assign to Buyer at the Time of Closing, all awards recovered or recoverable on account of such taking and all insurance proceeds recovered or recoverable on account of such damage, less any amounts reasonably expended by Seller in obtaining such award or such proceeds or in restoring the Premises.

8. The acceptance of the Assignment and the Additional Documents by Buyer or the nominee designated by Buyer, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are by the terms hereof, to be performed after or survive the Time of Closing.

9. Security deposits, (including interest payable thereon, of any), collected rents, water and sewer use charges, (to the extent payable by Seller), taxes for the then current year, shall be apportioned and fuel value (to the extent paid by Seller), shall be adjusted in

accordance with local custom, as of the Time of Closing and the net amount thereof shall be added to or be deducted from, as the case may be, the purchase price payable by Buyer at the Time of Closing. Uncollected rents (including the rent escalators) shall be apportioned when received by either party after the Time of Closing.

If the amount of said taxes is not known at the Time of Closing, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

10. The Buyer represents to the Seller that Buyer was not introduced to Seller, to South Boston Savings Bank or to the Premises by any real estate or mortgage broker other than R.M. Bradley & Co. and John M. Feeney of Bedingfield, Feeney & Associates, Inc. and agrees to indemnify and hold Seller harmless if this representation is not true. Seller agrees to pay to R.M. Bradley & Co. a commission of \$135,000 if, as and when but only if, as and when the Assignment is executed and the full purchase price paid hereunder. Buyer agrees to pay any and all fees due to John M. Feeney and Bedingfield, Feeney & Associates, Inc. in connection with this sale or any loan from South Boston Savings Bank which may be due and owing in connection with the financing of the Premises and other property in the Charlestown Navy Yard.

11. The Buyer agrees at the Time of Closing to assume all of Seller's obligations as Lessee under the Lease and as Lessor under the Subleases and Tenancies at Will, and as a party to the Service Contracts as specifically set forth therein, and will indemnify and hold the Seller harmless from any loss, cost, damages and expenses arising from acts or omissions of Buyer and Buyer's Nominee and of any other party in which Buyer has an interest after

the Time of Closing with respect to the Lease, the Subleases, Tenancies at Will and the Service Contracts. Seller will indemnify and hold Buyer harmless from any loss, costs, damages and expenses arising from acts or omissions of Seller (but not of Seller's predecessors) prior to the time of closing with respect to the Lease, the Subleases, Tenancies at Will and the Service Contracts.

12. All deposits made hereunder shall be held by Peabody & Arnold, in escrow, as earnest money for the proper performance of this agreement on the part of the Buyer subject to the terms of this Agreement and shall be duly accounted for at the Time of Closing. If Buyer shall fail to fulfill Buyer's obligations hereunder, all payments made hereunder by Buyer shall be retained by Seller as liquidated damages without further recourse by either party in law or equity. Interest on the deposits will be split equally between the parties at the time of closing, unless the deposits are returned to Buyer or retained by Seller, in which event the interest shall follow the deposits.

13. If the Buyer registers or records this Agreement, it shall, at the option of Seller, become ipso facto null and void, and all payments made hereunder shall be retained by Seller as liquidated damages.

14. All notices required or permitted to be given hereunder shall be in writing and delivered by hand or mail postage prepaid, by registered or certified mail, addressed in the case of Seller c/o South Boston Savings Bank, 460 Broadway, South Boston, Massachusetts, 02127 with a copy to Jonathan Bangs, Peabody & Arnold, 50 Rowes Wharf, Boston, Massachusetts, 02110, and in the case of Buyer at the Buyer's address first stated above with a copy to David Bookhout, Esquire, Dionna, Bookhout & Gass, 73 Tremont Street, Boston,

MA 02109, or in the case of either party such other address as shall be designated by written notice given to the other party.

15. At the Time of Closing, Seller will deliver to Buyer the Assignment and the Additional Documents, fully executed, acknowledged and completed. At the Time of Closing, both parties hereto will fill in, execute and deliver to the other an agreement in the form of Exhibit E attached hereto.

16. The Buyer's obligations hereunder are subject to the Buyer obtaining from an institutional lender, within thirty (30) days from the date of this Agreement, a commitment for a first leasehold mortgage loan in an amount not to exceed \$6,400,000.00 secured by the Premises and by Buildings P, 96 and 79 in the Charlestown Navy Yard, Charlestown, Massachusetts. Said loan shall be jointly and severally payable by the leasehold owners of the aforesaid property, but shall be without personal recourse to Messrs. Heafitz and Conroy the individual owners of said entities subject to standard exceptions. The loan shall be for a term of 10 years with interest fixed at 8 1/2 % and with payments based on a 30 year amortization. The note shall provide for a prepayment penalty of 3% of principal during the first year of the loan, 2% of principal during the second year of the loan and 1% of principal during the third year of the loan. There shall be no prepayment penalty in the fourth and subsequent years of the loan.

17. (a) This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties.

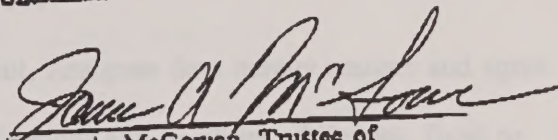
(b) This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(c) If any provision of this Agreement or the application thereof to any party hereto is held invalid, the remainder of this Agreement and the application thereof to any party hereto shall not be affected thereby.

(d) The terms "Seller" and "Buyer" wherever used herein shall include, and all of the provisions hereof shall bind and inure to the benefit of, the heirs, executors, administrators, successors and assigns of the respective parties hereto.

EXECUTED UNDER SEAL this 17th day of August, 1994.

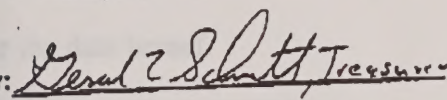
SELLER:


James A. McGowan, Trustee of
Building 33 Realty Trust and not
individually

BUYER:

KILKEE LIMITED PARTNERSHIP

By: Roundstone Development
Company, Inc.

By: 
Its Treasurer, hereunto duly
authorized

(EXHIBIT B)

ASSIGNMENT

I, James A. McGowan, Trustee of Building 33 Realty Trust ("Trust") UDT dated April 14, 1994 recorded Suffolk Registry of Deeds Book 19050, Page 287 hereby grant and assign without recourse to Kilkee Limited Partnership, a Massachusetts limited partnership ("Assignee") all my right, title and interest in and to the lease dated July 31, 1986 by and between The Boston Redevelopment Authority, as Landlord, and Navy Yard Plaza Development Associates - 33 Partnership, as Tenant, notice of which Lease is recorded with the Suffolk Registry of Deeds Book 12729, Page 177.

In connection with the foregoing assignment, Assignee does hereby assume and agree to pay, perform, observe and discharge those obligations and liabilities of Tenant, fixed or contingent, in connection with the above-assigned Lease arising from and after the date hereof and Assignee hereby agrees to and holds Trust harmless, indemnified and exonerated from and against any and all responsibility and liability in connection therewith resulting from any failure of said Assignee and of any nominee of said Assignee to fulfill the obligations of Tenant under the above-assigned Lease from and after the date hereof.

The Trust hereby agrees to and holds Assignee harmless, indemnified and exonerated from and against any and all responsibility and liability resulting from any failure of the Trust (but not of its predecessors) to fulfill the obligations of the Tenant under the above-assigned Lease prior to the date hereof.

EXECUTED UNDER SEAL this ____ day of ____, 1994.

Kilkee Limited Partnership

By: Roundstone Development Company, Inc.

By: _____

its _____, hereby duly authorized

James A. McGowan, Trustee of
Building 33 Realty Trust and not
individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk SS.

, 1994

Then personally appeared the above-named James A. McGowan, Trustee as aforesaid,
and acknowledged the foregoing to be his free act and deed, before me,

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Suffolk SS.

, 1994

Then personally appeared the above-named _____ as aforesaid, and
acknowledged the foregoing to be the free act and deed Roundstone Development Company,
Inc., as general partner of Kilkee Limited Partnership, a Massachusetts limited partnership,
before me,

Notary Public

My Commission Expires:

EXHIBIT DCERTIFICATE

The undersigned, Boston Redevelopment Authority, Landlord under the Lease (the "Lease") dated July 31, 1986 with Navy Yard Development Associates - 33 Partnership relating to premises (the "Plaza Premises") located in Charlestown, Massachusetts, known as Building 33; Charlestown Navy Yard, notice of which lease has been recorded with the Suffolk County Registry of Deeds, Book _____, Page _____, hereby certifies to Kilkee Limited Partnership, a Massachusetts limited partnership ("Assignee"), its successors and assigns, that:

1. The Lease has not been modified, changed, altered or amended in any respect.
2. The Lease is not in default, is in full force and effect, and rental has been paid through the month of _____, 1994.
3. No consent is required from the undersigned, or any other person, relating to the assignment of the Lease by the current holder of said lease, James A. McGowan, Trustee of Building 33 Realty Trust ("Assignor"), to Assignee, his successors or assigns.
4. This certification is made to induce Assignee to accept as assignment of the Lease from Assignor, knowing that Assignee relies upon the truth of this certificate in accepting said assignment.

Dated this _____ day of _____, 1994.

Boston Redevelopment Authority

By: _____
its _____, hereunto duly
authorized

EXHIBIT FCERTIFICATE

RE: Lease dated:
Landlord/Lessor:
Tenant/Lessee:

The undersigned, being the Tenant of the above-referenced Lease (the "Lease") hereby certifies to _____ that :

(1) There is no existing default on the part of the Landlord or the Tenant in any of the terms and conditions of the Lease;

(2) The Lease has not been amended or assigned, and Tenant has not sublet all or any portion of the leased premises;

(3) The undersigned has made no agreements with Landlord or its agents or employees concerning free rent, partial rent, rebate of rental payments or any other type of rental concession;

(4) The undersigned is entitled to no credit or reimbursement for work performed, or otherwise, and no offset or deduction in rent, and all rents have been paid through _____.

(5) Landlord has performed all its obligations under the Lease to date, and has fully completed any obligations relating to construction, alteration and installations relating to the leased premises and the building within which said premises are located.

This certification is made to induce _____ to accept an assignment of the Lease from Building 33 Realty Trust, knowing that said _____ relies upon the truth of this certificate in accepting said assignment.

Dated this _____ day of _____, 1994.

EXHIBIT GASSIGNMENT

James A. McGowan, Trustee of Building 33 Realty Trust ("Trust") U/D/T dated April 14, 1994 recorded with Suffolk Registry of Deeds, Book 19050, Page 287, hereby assigns to Kilkee Limited Partnership, a Massachusetts limited partnership ("Assignee") all its right, title and interest in and to a certain contract (the "Contract") dated _____ by and between Trust and _____, a copy of which is attached hereto.

In connection with the foregoing assignment, Assignee does hereby assume and agree to pay, perform, observe and discharge those obligations and liabilities of Trust pursuant to the terms of the Contract arising from and after the date hereof (the "Obligations"), and Assignee hereby agrees to and holds Trust harmless, indemnified and exonerated from and against any and all responsibilities and liability in connection therewith resulting from any failure of said Assignee to fulfill the Obligations from and after the date hereof.

The Trust hereby agrees to hold Assignee harmless, indemnified and exonerated from and against the failure of the Trust (but not of its predecessors) to fulfill the Obligations prior to the date hereof.

EXECUTED under seal this ____ day of _____, 1994.

KILKEE LIMITED PARTNERSHIP

By: Roundstone Development Company, Inc.

By: _____

Its _____, hereunto duly
authorized

James A. McGowan, Trustee of
Building 33 Realty Trust
as aforesaid but not individually

EXHIBIT HNOTICE OF ASSIGNMENT OF LEASE

REFERENCE IS HEREBY MADE to a NOTICE OF LEASE (the "Notice") executed on behalf of Boston Redevelopment Authority ("BRA") and Navy Yard Plaza Development Associates - 33 Limited Partnership ("Building 33 Limited Partnership"), recorded with the Suffolk Registry of Deeds at Book 12729, Page 177.

BRA, as LANDLORD, and BUILDING 33 LIMITED PARTNERSHIP as TENANT heretofore entered into a Lease dated as of July 31, 1986 relating to the Premises described in the Notice.

Tenant executed a mortgage dated July 31, 1986 of Tenants leasehold interest to South Boston Savings Bank which mortgage was recorded with said Deeds at Book 12729, Page 180 and which mortgage was foreclosed on April 14, 1994, and pursuant to which the leasehold interest was transferred to James A. McGowan, Trustee of Building 33 Realty Trust UDT dated April 14, 1994 recorded Suffolk Registry of Deeds Books 19050, Page 287 ("Building 33 Trust").

This instrument shall constitute notice that Building 33 Trust has assigned all its right, title and interest as Tenant under said Lease to _____ ("Assignee") as of the date hereof.

EXECUTED under seal this _____ day of _____, 1994.

ASSIGNEE

ASSIGNOR

KILKEE LIMITED PARTNERSHIP

By: Roundstone Development Company, Inc.

By: _____ James A. McGowan, Trustee of Building 33
its, _____, hereunto duly authorized Realty Trust and not individually

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. _____, 1994

Then personally appeared the above named James A. McGowan, Trustee as aforesaid, and acknowledged the foregoing to be his free act and deed, before me,

Notary Public

My Commission Expires:

PABOS:JB:99906_3

